

ERG Secretariat (Davide Gallino)

Subject

Note on access to ERG documents - Policy proposal

Background

In November 2006 the ERG Secretariat has received, via the Secretary General of the European Commission, an application for access to documents ERG (06) 45 (*Report on mobile access and competition effects (inclusive of ERG (06) 45b Spectrum allocation and bottlenecks*), and ERG (06) 47 (*Report on Market 18 analysis*) which were presented at the Madeira ERG Plenary for internal use only.

Following internal consultation, the amended versions of the documents have been published on ERG website, in accordance with the Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001, regarding public access to European Parliament, Council and Commission documents. This Regulation applies to all documents held by an institution, i.e. documents which it has produced or received, in all areas of EU activity.

Because the Agendas and the Conclusions of the meeting are published, or for other reasons, other applications to access documents will likely come in the future. The Group should thus decide a policy for the management of internal or confidential documents.

Summary

The ERG, in its nature of advisory group to the Commission, is bound to comply with the Regulation 1049/2001 (ERG (06) 61) on access to documents. The ERG is not a third party in the application of the Regulation. That Regulation applies to ERG documents and provides indications on how to deal with access application. In general disclosure of all documents is encouraged; if some documents are for internal use only, it is possible to deny access, partially or in full, on the ground of several specific exceptions, which must be made known to the applicant.

Proposal for a policy on documents for internal use

For the future, it will be necessary to develop a policy, as applications will inevitably grow as a by-product of increased attention for ERG activities. Herein, following a discussion on the subject at the Contact Network, a few proposals are listed:

1) **Agendas.** Agendas are published before the meetings and thus might attract applications to access documents. Anyway, the CN suggests to continue to keep internal use only documents in the published agendas. If applications for access to internal use only documents are presented, those will be dealt with on a case by case basis.

2) **Terminology.** For all the documents falling into the category, the CN suggested to change the wording "confidential" to "internal use only" because the wording „confidential“, in the Regulation 1049/2001, refers to secret or highly confidential documents (classified), which are not managed by ERG.

Stakeholder's views (where known)

In general, it can be said that stakeholders (including consumers and experts, in addition to industry) have an interest to access all ERG documents. The Commission and other institutions encourage publication of most documents.

Counter-arguments / Alternative Views

According to Article 9 of Commission Decision of 5 December 2001, amending its rules of procedure, when the document is disclosed following an application, it shall be automatically provided on request and as far as possible made directly accessible by electronic means

Decisions requested

Decision on policy option 1 and 2, subject to the Ruling 1049/2001, on access to ERG documents.

Level of decision making

Heads

Discuss with EC

Yes. Ruling 1049/2001 applies to ERG Documents